

The BBC and Henry VIII's Heirs

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Once again, the BBC is under pressure. Once again, the British Government is [briefing](#) hostile newspapers about how both it, and its sister public service broadcaster, Channel 4, are in the firing line. Once again, dark clouds gather over its future, which has been called into question. The licence fee, the hypothecated tax that provides the corporation with its revenue, has been under threat in the past, but this time, it's proved the lightning rod for more dissent, with a citizen's campaign to [defund the BBC](#). How did we get here? Where should we go? Where will we go?

Where we were

One way of looking forward is to look back. Specifically, to 1528. That does sound like an extravagant claim but bear with me. 1528 was the date when the English authorities – then in the figure of King Henry VIII and his Council in Star Chamber – started to [regulate](#) the English printing trade. But he wasn't breaking new ground in regulating the flow of information. Many years before even Henry, the doctrine of [scandalum magnatum](#) was developed, which made illegal 'disgraceful words against eminent persons'. Indeed, the [1275 Statute of Westminster](#), which introduced the offence, railed against what it called 'false news' centuries before Donald Trump.

It did not matter – and I'll come back to this – that what you were saying was true. The greater the truth, they said, the greater the libel, on the grounds that true words were more likely to sow dissent, and so more likely to be harmful to the King's Peace. These aren't dead legal letters. Echoes of this still remain vibrant in, for example, the attitude of the Indian courts to those who criticise them. This colonial relic in the common law is something the famous Indian novelist [Arundati Roy](#) discovered to her detriment.

Henry's heirs continued legislating against those they saw as irresponsible, irksome, and tiresome, until direct prior restraint ended in 1695. This was when the *de facto* means of regulating print – and thereby print journalism – lapsed, with the lapse of the Licensing of the Press Act 1662. But journalism continued to be an irritant to the authorities, and laws of one sort or another to constrain it continued to be passed – and have continued to be passed – ever since. But these laws were frequently of a more subtle sort. They didn't require direct censorship before words were published. They, for example, imposed a special tax – the Stamp – on newspapers. This was at least partially intended to make newspapers too expensive for many, and therefore to reduce the flow of information and the influence of journalists.

Where we are

Which brings us bang up to date. Or thereabouts, give or take a few hundred years, a few dozen textbooks of legislation and case law, the invention of wireless telegraphy, the radio, television, satellite television and the Internet. Through all of these changes, the legal and political fundamentals have pretty much remained the same. This provides us with an explanation of why we've arrived at the current moves by Her Majesty's Government to clip the BBC's wings. Dominic Cummings, Boris Johnson's unelected grey eminence, is Henry's modern heir. Those who wield authority have always sought to constrain and control the views of those under them. This was true of King Henry VIII – a man not known for his tolerance, self-control and even-temper – and seems true of Dominic Cummings and Boris Johnson. (Likewise)

Cummings (who has [announced](#) he will step down before Christmas) has had his eyes on the BBC for more than a [decade](#), when his think tank described it as the 'mortal enemy' of the Tory Party. When the elected Boris Johnson placed him, unelected, into a position of power, Johnson gave him the ability to act on this hostility. So it was no surprise that earlier this year, Cummings was [reported](#) as saying he wanted to 'whack' the BBC. With Cummings gone, will things change? It's unlikely, as he's not alone in his views. [Others](#) agree, discerning in the BBC an institutional liberal left-wing bias.

One might, perhaps, expect the Left to come riding in at this point, blowing horns, to the Corporation's rescue. But no. [Many](#) on the Left don't much like the BBC either, discerning hidden hands at work in the political economy of news, and not-so-hidden hands advancing their own selfish interests. [Specific criticism](#) has been directed against how the BBC covered Jeremy Corbyn.

Why it's important

Tracing today's events back to Henry VIII and his Star Chamber shows that this isn't a party-political issue, so much as a political issue. It's about the function of the BBC in democracy. And, though it brings out British journalists' hives to say so (because they see themselves as [tradespeople](#), not professionals), this is about the function of the press and the BBC in the UK Constitution.

This is a contentious point amongst common law [lawyers](#) too, who frequently see the press in general – and the BBC in particular – as merely exercising the rights of the general public, albeit in an institutional setting. Just as, in the English system, policemen are supposed to be citizens in uniform, journalists are citizens who happen to buy their ink by the barrel. But it's true: the power of the press in our constitution is assumed by, and built into, for example, our Human Rights Act. The Act doesn't permit our apex court, The Supreme Court, to strike down an Act of Parliament. It makes a declaration of incompatibility. What happens next is not set down in law. At least one assumption is that any legislative change will be brought about by the hue and cry of bad publicity. Political pressure is one way that constitutional conventions are policed, and bad publicity is a means by which political

pressure is exerted. And what is the means by which publicity happens? The press. And which is the elephant of British journalism? The BBC.

So this is a constitutional question. It's an issue of the Executive, aided by many of their political opponents, attempting to reduce the flow of information and the influence of journalists. The problem is that the BBC is an irritant to those who want to exercise power, because it may disagree with them. The Right considers it to be institutionally biased to the Left, and the Left consider it to be institutionally biased to the Right. Jeremy Corbyn, it seems, is as much one of Henry VIII's heirs as Dominic Cummings. (A staunch republican, he won't like that characterisation.)

It's about control

So much, so abstract and historical. What's going on today? The recent briefings by the Government have come on the back of an attempt earlier in the year to capture the senior positions that oversee the BBC. The Conservatives put forward profoundly – proudly, impeccably – partisan candidates to positions of power over the Corporation. One, Charles Moore, was put forward to be [Chair of the BBC](#). Moore is an arch-critic of the BBC, having been convicted for not paying the licence fee because of his deep distaste for it and some of its actions. The other senior position was the [Head of Ofcom](#). This is the regulator that ultimately assesses complaints about the editorial content the BBC. It was said to have been offered by Johnson (not that this should have been in his gift – there are official procedures that have to be gone through for this sort of thing – *officially*) to Paul Dacre, former editor of the Daily Mail. The Mail is a right-wing tabloid that is the BBC's nemesis, and Dacre – for many years – its great helmsman.

But why should all this matter? Surely in these days of information abundance – so much, permanently everywhere – what difference will it make? If the Conservatives turn the BBC to the right, or the Labour Party turn it to the left, will not the information void be filled with a thousand other voices, from the [Canary](#) on the Left to [Guido Fawkes](#) on the Right?

Well, no. And for at least two reasons. Both relate to the ancient view in the common law that telling the truth makes matters worse.

The first is that even in this everything, everywhere, all-the-time age, the BBC maintains a reputation for trust (declining, true, but still), that sets it apart from many other British journalistic institutions. It is worth the Tories and/or Labour hacking it, because its audience still has (on the whole) affection for the institution, and trusts what it says. This is not least, I think, because it remains regulated for 'due impartiality'. This is an unfashionable concept, laughed at by many commentators, and sneered at by many academics. And yet it's not too difficult to see what would happen, should it be abandoned. One only has to look across the Atlantic to the US, who abandoned their version – the Fairness Doctrine – in the 1980s. TV was said not to need it, as TV was merely a '[toaster with pictures](#)'. After the Doctrine was grubbed up, US shock jocks and Fox News sprouted and flourished in its place. Is political discourse the better for that?

The second is because we've moved from an abundance of attention and a paucity of information, to a world where there's an abundance of information, and a paucity of attention. In a town where everyone is speaking, what's valuable is silence. You can't listen to everything and everyone. Nor would you want to. So, too, in an age where everyone can speak, what's become valuable is attention. The BBC still has its audience's attention. And that makes it valuable to the Tories and to Labour. It's why they want to control it.

What next?

I asked three questions in my first paragraph. The easier were the first two. Answering 'how we got here?' helped answer 'where should we go?'. The third was the difficult one: unknown is where *will* we go. A lot depends on whether the levels of trust in the BBC, and the fact that audience pay attention to it, will continue. Cummings' imminent departure won't change anything fundamentally. Paradoxically, the BBC's best chance of seeing off the threat of political influence is if people lose trust in it, and ignore it. If they do, the circling political vultures will fly away. But this would be a price that the country should not pay. It would be an inestimable loss to our unwritten, flexible, but vulnerable constitution. It would be better for the country if politicians could learn to live with a source of information they can't control, and if they recognised the old truth – self-evident to many, even if not to Henry's heirs of whatever political stripe – that what's better for the country is not the same as what's best for them.

